# United States Department of Labor
# Employees' Compensation Appeals Board

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| **E.A., Appellant** | ) | |
| **and** | ) | **Docket No. 12-522** |
| | ) | **Issued: July 19, 2012** |
| **U.S. POSTAL SERVICE, POST OFFICE, Houston, TX, Employer** | ) | |

*Appearances:*
*Appellant, pro se*
*Office of Solicitor,* for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge
JAMES A. HAYNES, Alternate Judge

### ***JURISDICTION***

On January 10, 2012 appellant filed a timely appeal from a November 9, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

### ***ISSUE***

The issue is whether appellant has more than 15 percent impairment of her right upper extremity for which she received schedule awards.

### ***FACTUAL HISTORY***

On October 25, 2007 appellant, then a 48-year-old letter carrier filed a Form CA-2, notice of occupational disease, alleging that she developed a rotator cuff tear as a result of casing and carrying mail. She became aware of her condition and realized it was causally related to her

[1] 5 U.S.C. §§ 8101-8193.

work on May 2, 2006. Appellant stopped work on February 20, 2007 and returned to regular duty on July 11, 2007. OWCP accepted sprain of the right shoulder, upper arm and rotator cuff, disorder of the bursae and tendons in the right shoulder and expanded her claim to include radial styloid tenosynovitis on the right.[2]

A November 20, 2006 magnetic resonance imaging (MRI) scan of the right shoulder revealed a supraspinatus and infraspinatus tendinosis with a suspected small full thickness tear in the anterior aspect of the supraspinatus distal tendon. Appellant came under the treatment of Dr. Stewart M. Dean, a Board-certified orthopedic surgeon, who on February 21, 2007 performed an arthroscopic subacromial decompression of the right shoulder, repair of the rotator cuff and biceps tenodesis and diagnosed right shoulder impingement syndrome, large supraspinatus and infraspinatus tear and biceps partial rupture. On April 30, 2007 Dr. Dean noted that appellant developed adhesive capsulitis and on May 2, 2007 performed a manipulation under anesthesia and diagnosed right shoulder postoperative adhesive capsulitis.

On October 14, 2008 appellant filed a claim for a schedule award. In a January 20, 2009 decision, OWCP issued a schedule award for 14 percent impairment of the right arm under the fifth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*[3] (A.M.A., *Guides*).

On October 13, 2010 appellant underwent an MRI scan of the right shoulder which revealed postoperative change of prior rotator cuff repair with supraspinatus and infraspinatus tendinopathy, a small partial articular surface tear of the supraspinatus tendon, mild subacromial subdeltoid bursitis and mild-to-moderate acromioclavicular joint osteoarthritis. She continued to be treated by Dr. Dean from December 13, 2010 to July 8, 2011, for insidious onset of right shoulder pain radiating down the arm with tingling and numbness in the hand. Dr. Dean diagnosed right shoulder bursitis, possible recurrent right rotator cuff tear, possible right cervical radiculopathy, de Quervain's tenosynovitis of the right wrist and lateral epicondylitis of the right elbow. On February 1, 2011 he noted that appellant developed a frozen right shoulder and de Quervain's tenosynovitis of the right wrist and recommended manipulation under anesthesia and first dorsal compartment release. On March 11, 2011 Dr. Dean performed right shoulder manipulation under anesthesia and right wrist first dorsal compartment release and diagnosed frozen right shoulder and right de Quervain's tenosynovitis. On June 28, 2011 he noted that appellant was progressing postoperatively with minimal pain and improving range of motion. Dr. Dean opined that she had reached maximum medical improvement and could return to work without restrictions.

[2] Appellant had previously filed a claim for an occupational disease alleging that on February 6, 2003 she developed carpal tunnel syndrome as a result of performing her work duties which was accepted for bilateral carpal tunnel syndrome and bilateral lateral epicondylitis, claim number xxxxxx655. She underwent a left carpal tunnel release. On April 28, 2005 appellant was granted a schedule award for eight percent impairment of the left arm. That claim was doubled with the current appeal before the Board.

[3] A.M.A., *Guides* (5th ed. 2001).

On July 22, 2011 OWCP requested that Dr. Dean provide an impairment rating in accordance with the sixth edition of the A.M.A., *Guides*.[4] It subsequently received a July 8, 2011 report from Dr. Raul Sepulveda, a Board-certified orthopedic surgeon and associate of Dr. Dean, who noted a history of injury and diagnosed de Quervain's tenosynovitis and status post right shoulder arthroscopic surgery biceps tenodesis. Appellant complained of mild and aching pain in her right shoulder, arm and hand with intermittent pain at night in her shoulder, weakness and loss of strength in her right arm, with occasional tingling in her right arm with pain increasing with activity. Dr. Sepulveda reported findings of no atrophy, spasticity or fasciculation and normal muscle strength and sensory examination in all muscle groups in the upper and lower extremities. He noted that appellant reached maximum medical improvement as of July 8, 2011. Dr. Sepulveda stated that, pursuant to Table 15-5, Shoulder Regional Grid, Ligament/Bone/Joint, for the diagnosed rotator cuff injury, full-thickness tear, appellant was a class 1 rating, grade D for residual loss of functional for six percent impairment of the right arm. He noted that this determination considered the diagnosis, studies and physical examination. With regard to the right wrist tenosynovitis, Dr. Sepulveda stated that, pursuant to Table 15-3, Wrist Regional Grid, Muscle/Tendon, Wrist sprain/strain, for the diagnosed de Quervain's disease, appellant was a class 1 rating with a default value of one percent.

In an October 5, 2011 report, OWCP's medical adviser reviewed the medical evidence and opined that appellant reached maximum medical improvement on July 8, 2011. Under the A.M.A., *Guides*, he concurred with Dr. Sepulveda's findings. The medical adviser opined that, pursuant to section 15.2, Diagnosis-Based Impairment, Table 15-5, Shoulder Regional Grid, Ligament/Bone/Joint, for the diagnosed rotator cuff injury, full thickness tear, appellant was a class 1 rating for residual loss, functional with normal motion, grade D, with a default rating of six percent upper extremity impairment. He noted that appellant was previously granted 14 percent impairment of the right upper extremity based on abnormality of the right shoulder.[5] Based on this, the medical adviser opined that appellant was not entitled to an additional award for her right shoulder. He noted with regard to the right de Quervain's tenosynovitis, pursuant to Table 15-3, page 395, Wrist Regional Grid, Muscle/Tendon, Wrist sprain/strain appellant was a class 1 rating, grade C with a default value of one percent. The medical adviser opined that appellant had additional impairment of one percent impairment of the right arm for de Quervain's tenosynovitis.

In a decision dated November 9, 2011, OWCP granted appellant a schedule award for an additional one percent impairment for the right upper extremity.[6] The period of the award was from July 8 to 29, 2011.

[4] A.M.A., *Guides* (6th ed. 2008).

[5] The Board notes that the medical adviser incorrectly noted that appellant was granted a 14 percent impairment of the left upper extremity on January 21, 2009. This is a typographical error as the record shows that appellant was granted 14 percent impairment of the right upper extremity.

[6] OWCP's decision actually states that the schedule award was for the left arm. However, the context of the record and the evidence upon which the award was based clearly indicates that this was a typographical error and that the award was for the right arm.

## ***LEGAL PRECEDENT***

The schedule award provision of FECA[7] and its implementing federal regulations,[8] set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.[9] For decisions after February 1, 2001, the fifth edition of the A.M.A., *Guides* is used to calculate schedule awards.[10] For decisions issued beginning May 1, 2009, the sixth edition of the A.M.A., *Guides* will be used.[11]

## ***ANALYSIS***

On appeal, appellant contends that she is entitled to a s**c**hedule award greater than an additional one percent permanent impairment of the right arm. OWCP accepted her claim for sprain of the right shoulder, upper arm and rotator cuff, disorder of the bursae and tendons in the right shoulder and radial styloid tenosynovitis on the right.

Appellant submitted a July 8, 2011 report from her physician, Dr. Sepulveda who diagnosed de Quervain's tenosynovitis and status post right shoulder arthroscopic surgery biceps tenodesis. Dr. Sepulveda noted that appellant complained of mild and aching pain in her right shoulder, arm and hand with intermittent pain at night in her shoulder, weakness and loss of strength in her right arm, with occasional tingling in her right arm with pain increasing with activity. He noted that, pursuant to Table 15-5, Shoulder Regional Grid, Ligament/Bone/Joint, for the diagnosed rotator cuff injury, full thickness tear, appellant was a class 1 rating, grade D for residual loss of functional for six percent impairment of the right upper extremity for her shoulder problem. Dr. Sepulveda noted that this determination considered the diagnosis, studies and physical examination noted above. With regard to the right wrist tenosynovitis, he noted that, pursuant to Table 15-3, Wrist Regional Grid, Muscle/Tendon, Wrist sprain/strain, for the diagnosed de Quervain's disease, appellant was a class 1 rating with a default value of one percent.

The medical adviser properly reviewed the medical record and in a report dated October 5, 2011, concurred with Dr. Sepulveda. He, using Dr. Sepulveda's findings, utilized the Shoulder Regional Grid, Table 15-5, A.M.A., *Guides*, page 403, and identified a class 1 impairment based on rotator cuff injury, full-thickness tear. The record revealed that appellant had mild and aching pain in her right shoulder, arm and hand with intermittent pain at night in

[7] 5 U.S.C. § 8107.

[8] 20 C.F.R. § 10.404.

[9] *Id.* at § 10.404(a).

[10] Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 4 (June 2003).

[11] FECA Bulletin No. 09-03 (issued March 15, 2009).

her shoulder, weakness and loss of strength in her right arm, with occasional tingling in her right arm with pain increasing with activity warranting a class 1 designation, grade D. Under Table 15-5, grade D, for a class 1 full-thickness tear, with residual loss, represents six percent upper extremity impairment. With regard to the de Quervain's tenosynovitis, pursuant to the Wrist Regional Grid, Table 15-3, he identified a class 1 impairment based on the diagnosed de Quervain's disease. Under Table 15-3, the default grade C, for a class 1 impairment, for de Quervain's tenosynovitis, warrants one percent impairment. The medical adviser properly determined that, as appellant was previously granted 14 percent impairment for her shoulder, she was not entitled to an additional award attributable to the right shoulder.[12] However, as appellant had not previously had an award based on the right wrist, she had additional impairment one percent impairment of the right arm for de Quervain's tenosynovitis.

The Board finds that the medical adviser properly applied the A.M.A., *Guides* to rate impairment to appellant's right shoulder as set forth by Dr. Sepulveda. Both appellant's treating physician and OWCP's medical adviser reviewed the medical evidence and agreed that appellant had an additional one percent impairment for the right upper extremity under the formula of the sixth edition. The weight of medical evidence establishes the extent of permanent impairment in this case.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

## ***CONCLUSION***

The Board finds that appellant has an additional one percent impairment of the right upper extremity, for a total 15 percent impairment, for which she received a schedule award.

[12] *See* 5 U.S.C. § 8108 (the period of compensation payable under the schedule award provision of FECA is reduced by the period of compensation paid under the schedule for an earlier injury if compensation in both cases is for disability for the same member or function and OWCP finds that compensation payable for the later disability would in whole or in part duplicate the compensation payable for the preexisting disability).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the November 9, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: July 19, 2012
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board